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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,549	07/02/2003	Marie Johansson	7157-00	3609

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COLGATE-PALMOLIVE COMPANY
909 RIVER ROAD
PISCATAWAY, NJ 08855

EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,549

Applicant(s)

JOHANSSON ET AL.

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/27/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on September 27, 2006. Claims 6-29 are pending. Claim rejection made under 35 U.S.C. § 103 (a) over Laden et al. (WO 01/85103 A) in view of Flick (Cosmetic Additives: An Industrial Guide, 1991) and Zabotto et al. (US 4673526) is modified to address the new claim limitations.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-29 are rejected under 35 U.S.C. 103(a) as being unpatentable by Laden et al. (WO 01/85103 A) in view of Flick (Cosmetic Additives: An Industrial Guide, 1991) and Zabotto et al. (US 4673526).

Laden et al. disclose anhydrous skin cleansers comprising water-immiscible emollient oil; oil-gelling agent; and emulsifying agent that forms an emulsion in situ on the skin when the skin cleanser is contacted. See abstract. The reference teaches that the skin cleanser gels form emulsions in situ on the skin during use that can be removed from the skin with water. See instant claim 6. The emollient oils of instant claims 7-14 and 18, including paraffin oil, petroleum jelly, lanolin oil, fish oils, sweet almond oils, palm oil, avocado oil, soybean oil, sunflower oil, coconut oil, jojoba oil, dimethicone, isopropyl myristate, isopropyl palmitate, octyl stearate, isocetyl stearate, decyl oleate are disclosed in p. 7, line 11 – p. 8, line 13. The emulsifying agents of instant claim 16 are disclosed in p. 11, lines 1 – 18. The oil-gelling agents of instant claims 27 are taught in p. 8, line 14 – p. 9, line 7. Example 1 also discloses a specific

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formula comprising glyceryl stearate and PEG-100 stearate (emulsifier), mineral oil (emollient), and fumed silica (oily gelling agent). See also Examples 2-10.

While Laden et al. do not explicitly disclose linoleic acid, myristic acid, palmitic acid, and stearic acid as recited by present claim 15, these fatty acids are inherently present in vegetable oils, particularly in almond oil and avocado oil. See Flick, p. 215.

While Laden et al. does not explicitly teach wax, the reference teaches using petrolatum jelly and C7-C18 aliphatic and aromatic alcohols, which include cetyl (C16) and stearyl (C18) alcohols. See p. 7, lines 24 – 30, p. 8, lines 14-16.

Zabotto et al. disclose anhydrous skin cleansing composition comprising an oil phase and an emulsifying agent. See abstract. Example 5 teaches a formulation comprising 6 % wt petroleum jelly and 2 % ozokerite wax; 14 % of HOSTAPHAT KW (emulsifier); and 68.4 % of petroleum jelly oil. See col. 2, line 31 – col. 3, line 62. See instant claims 6, 17-19. Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” See In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this case, claim 1 requires “no more than about 10 weight %” of at least one emulsifying agent. Since “about 10” can read on about 14, examiner views that the claimed amount of the emulsifier is within obvious range of the prior art. Similarly, while Zabotto teaches that the oil phase can generally contain oil and wax in ratio of 1:1 to 3:1, Example also exemplifies a specific formulation

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in Example 5 which comprises oil and wax which are in the obvious weight range from the claimed invention. The prior art amount of oil is above 25 wt %, which meets the claimed limitation, while the total amount of the waxes is 8 %, which is close to "about 7". Examiner takes the position that a skilled artisan would have discovered, by routine experimentations, optimum weight amounts of oil, emulsifier, and wax that stabilize the composition.

The oils of instant claims 7-14, including purcellin oil, sweet almond oil, avocado oil, dimethylpolysiloxane, etc., are disclosed in col. 2, lines 35 – 54. The waxes of instant claims 17-26 are disclosed in col. 2, line 61 – col. 3, line 28. The emulsifiers of instant claim 16 are also disclosed in col. 3, lines 43 – 62.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify the cleansing composition of Laden by mixing wax in the oil phase as motivated by Zabotto because 1) Laden teaches using cetyl and stearyl alcohols and petrolatum jelly in the oil phase of the cleanser gel; and 2) Zabotto also teaches that it is well known to use a mixture of oil and wax to make an emollient phase in formulating a skin cleansing composition. The skilled artisan would have had a reasonable expectation of successfully producing a stable, anhydrous skin cleanser with similar emolliency.

Response to Arguments

Applicant's arguments filed on September 27, 2006 have been fully considered but they are moot in view of the new grounds of rejection.

Applicants assert that the oil:wax ratio of Zabotto is different from the presently claimed weight ratio of the oil and wax. As indicated in the above rejection, the reference also teaches a formulation having the limitations that are within the obvious range from the claimed composition.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

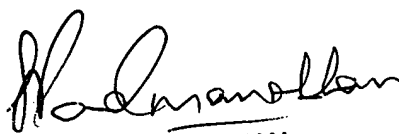
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

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If attempts to reach the examiner³ by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gina C. Yu
Patent Examiner


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER